



THE CITY OF NEW YORK
LAW DEPARTMENT

100 CHURCH STREET
NEW YORK, NY 10007

ZACHARY W. CARTER
Corporation Counsel

Peter G. Farrell
Senior Counsel
Tel: (212) 356-3532
Fax: (212) 356-3509

August 15, 2014

By Email and Regular Mail

Honorable Charles S. Haight, Jr.
Senior United States District Judge
United States District Court
141 Church Street
New Haven, CT 06510

By ECF

Honorable Joan M. Azrack
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Handschu v. Special Services*, 71 Civ. 2203 (CSH)
Raza v. City of New York 13 Civ. 3448 (PKC) (JMA)

Dear Judge Haight and Judge Azrack:

Defendants write on behalf of all parties in the above two cases. We write to advise that counsel for the parties have met together on two occasions and have agreed to attempt to consensually resolve the pending disputes (hereinafter the "Settlement Process"). In order to facilitate the Settlement Process, we write to respectfully request that each of you order the provisions set forth below.

As the Courts are aware, while each of these cases is based on unique facts and arguments, there are also some common underlying issues between them. Each involves a claim that the NYPD's Intelligence Bureau is conducting investigations of Muslims based upon religion. In *Handschu*, class counsel claim that the investigations violate the *Handschu* Guidelines, while in *Raza* the plaintiffs claim the investigations violate the First and Fourteenth Amendments.

In order to facilitate the Settlement Process, the defendants have agreed to allow cross disclosure between class counsel in *Handschu* and counsel in *Raza* of investigative statements made available in the respective actions. This cross disclosure will allow counsel in each case to examine a common set of documents and provide for a common basis for discussion. Moreover, additional information is contemplated to be exchanged between the parties.

To facilitate this exchange of information, the parties respectfully request the Courts in both cases order the following agreements which shall apply to any and all disclosures (documents, presentations, conversations, interviews, etc.) made during the Settlement Process.

Handschu and Raza

- 1) Paul Chevigny, Jethro Eisenstein, Franklin Siegel, Martin Stolar, and Arthur Eisenberg (collectively, “Handschu Class Counsel”) shall be treated as “Plaintiffs Counsel” as defined in Section I(E) of the Stipulation and Protective Order for the Production and Exchange of Confidential Materials, dated March 20, 2014 previously entered in *Raza* (the “*Raza* Protective Order”) (Attached as Exhibit A). Sections III, V, VI, and VII of the *Raza* Protective Order shall apply to Handschu Class Counsel. No other provisions of the *Raza* Protective Order shall apply to Handschu Class Counsel.
- 2) Hina Shamsi, Patrick Toomey, Ashley Gorski, Arthur Eisenberg, Beth Haroules, Ramzi Kassem, Diala Shamas, Hector Gallegos, and Adam Hunt (collectively, “*Raza* Counsel”) shall be subject to the Memo Endorsed Letter dated March 14, 2014 (endorsed March 17, 2014) entered in Handschu (Attached as Exhibit B).
- 3) If the Settlement Process ends unsuccessfully or the stay proposed in ¶5 below ceases: (i) the cross disclosure permitted under ¶¶ 1 and 2 above shall cease; (ii) Handschu Class Counsel shall no longer be treated as “Plaintiffs Counsel” as defined in Section I(E) of the *Raza* Protective Order and shall not have access to information produced in *Raza*; (iii) *Raza* Counsel shall not have access to information produced under the March 17, 2014 endorsed order in Handschu; and (iv) all other protections including those prohibiting disclosure will remain in effect.
- 4) All information disclosed during the Settlement Process, including but not limited to documents, presentations, conversations or interviews: (i) shall not be admissible to prove liability for or invalidity of a claim; and (ii) shall remain confidential, privileged, inadmissible and shall not be used in any subsequent proceeding, including as a basis for impeachment of any witness, except as set forth in this paragraph. The parties realize that facts once learned cannot be unlearned. If the Settlement Process ends unsuccessfully and litigation is resumed, all parties retain the right to continue discovery pursuant to Rule 26 *et seq.*, and to seek disclosure of all appropriate information including

documents that have been seen except that no party may cite to or invoke information disclosed during the Settlement Process as a basis for seeking Rule 26 disclosures unless the request for information can be justified upon some other ground. In response to any request for disclosure under Rule 26, the parties reserve the right to invoke any objection, privilege or prior court ruling as a basis for refusing to disclose such documents or statements and for asserting the confidentiality of such documents or statements. In the event that the Settlement Process ends unsuccessfully, nothing in this paragraph shall prevent any party from seeking disclosure of documents or information under Rule 26 *et seq.* that were created or that originated before or after the unsuccessful close of the Settlement Process.

- 5) Discovery and all proceedings in each case shall be stayed upon endorsement or “so-ordering” of these provisions by each court. All due dates shall be tolled for a period of 45 days from the date both Courts so order the provisions set forth herein. In the event that any party concludes that the Settlement Process is futile, the stay and tolling can be terminated with written notice to the other parties and the Court.

The stay requested in ¶5 above is requested to permit the parties to focus their efforts and time on the Settlement Process. The parties respectfully request that the Courts endorse or “so order” the above provisions.

Respectfully submitted,



Peter G. Farrell
Senior Counsel

cc. The Honorable Pamela K. Chen (by ECF)
Handschu Class Counsel. (by email)
Plaintiffs' Counsel in Raza (by ECF and email)

Exhibit A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

HAMID HASSAN RAZA; MASJID AL-
ANSAR; ASAD DANDIA; MUSLIMS
GIVING BACK; MASJID AT-TAQWA;
MOHAMMAD ELSHINAWY,

Plaintiffs,

v.

CITY OF NEW YORK; MICHAEL R.
BLOOMBERG, in his official capacity as
Mayor of the City of New York; RAYMOND
W. KELLY, in his official capacity as Police
Commissioner for the City of New York;
DAVID COHEN, in his official capacity as
Deputy Commissioner of Intelligence for the
City of New York,

Defendants.

No. 13-CV-03448 (PKC) (JMA)

**FIRST AMENDED STIPULATION
AND PROTECTIVE ORDER FOR
THE PRODUCTION AND
EXCHANGE OF CONFIDENTIAL
MATERIALS**

WHEREAS, the parties intend to produce certain documents or disclose certain information pursuant to Rules 26, 33, and 34 of the Federal Rules of Civil Procedure that they deem to be confidential or otherwise inappropriate for public disclosure; and

WHEREAS, the parties will only produce these documents if appropriate protection for their confidentiality is assured;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the parties, as follows:

I. DEFINITIONS

A. **“Action”** shall mean the case of Raza v. City of New York, 13 CV 3448 (PKC) (JMA), pending in the Eastern District of New York.

B. . **“Protected Material”** shall mean information designated pursuant to the procedures set forth in Section II. If the Protected Material is a document, any metadata associated with that document shall be considered Protected Material as well.

C. **“Plaintiffs”** shall mean, for the purposes of this Stipulation: (i) Hamid Hassan Raza; (ii) for Masjid Al-Ansar, Hamid Hassan Raza and Mohsin Raza; (iii) Asad Dandia; (iv) for Muslims Giving Back, Asad Dandia, Mohamed Bahi, and Mohammad Mohammad; (v) for Masjid At-Taqwa, Imam Siraj Wahhaj, Imam Osman Adam, and Ali Abdul Karim; and (vi) Mohammad Elshinawy. Plaintiffs’ Counsel may seek to allow additional current or former board members of Masjid Al-Ansar, Muslims Giving Back, and Masjid At-Taqwa to view Confidential Material if such persons have relevant information concerning the documents or their contents. If so, Plaintiffs’ Counsel shall inform Defense Counsel of the name of the person they seek to add and Defense Counsel shall respond with their agreement or disagreement within one business day. If the parties cannot agree, Plaintiffs’ Counsel may make an ex parte application to the court. Defense Counsel may also file any objections ex parte.

D. **“Defendants”** shall mean: (i) Michael Bloomberg, Raymond Kelly, and David Cohen, in their official capacities, and their successors-in-interest; and (ii) current or former employees of the New York City Police Department (“NYPD”) not including former confidential informants or similar agents, whose assistance or participation is necessary for the defense of this action.

E. **“Plaintiffs’ Counsel”** shall mean attorneys of record appearing on behalf of any named plaintiff in this action who: (i) are signatories to this Stipulation and Order; or (ii) have signed “Exhibit A” hereto, which will be maintained in the offices of Plaintiffs’ Counsel.

F. “Defense Counsel” shall mean (i) attorneys of record appearing on behalf of any named defendant to this action who are signatories to this Stipulation and Order; (ii) attorneys of record appearing on behalf of any named defendant to this action who have signed “Exhibit A” hereto, which will be maintained in the offices of Defense Counsel; and (iii) attorneys employed by the New York City Police Department who are duly admitted to the practice of law in the State of New York, who are providing legal counsel in this action, and who have signed “Exhibit A” hereto, which will be maintained in the offices of Defense Counsel.

G. “Plaintiffs’ Designated Support Staff” shall mean up to 13 full-time employees of the American Civil Liberties Union, the New York Civil Liberties Union, CLEAR project, and/or Morrison & Foerster LLP who: (i) have been designated by Plaintiffs’ counsel; and (ii) have signed “Exhibit A” hereto, which will be maintained in the offices of Plaintiffs’ counsel. “Plaintiffs’ Designated support Staff” does not include law student interns with the CLEAR project, nor any other intern, extern, or other part-time employee. copies of “Exhibit A” signed by Plaintiffs’ Designated Support Staff and the date of birth of each of Plaintiffs’ Designated Support Staff shall be provided to Defense Counsel 5 days prior to Plaintiffs’ Designated Support Staff accessing any Protected Material. Defendants are permitted to perform background checks on all of Plaintiffs’ Designated Support Staff prior to them accessing any Protected Material.

H. “Defendants’ Designated Support Staff” shall mean full-time employees working on behalf of the New York City Law Department and full-time employees of the NYPD who provide legal support services who: (1) have been designated by Defense Counsel; and (2) have signed “Exhibit A” hereto, which will be maintained in the offices of Defense

Counsel. Defense Counsel shall disclose the identity and number of their Designated Support Staff to Plaintiffs' Counsel.

I. **"Producing Party"** shall mean a party disclosing material pursuant to its obligations under Fed. R. Civ. P. Rules 26, 33, or 34.

J. **"Receiving Party"** shall mean a party obtaining material from the Producing Party in furtherance of prosecuting or defending this Action on behalf of any named party thereto.

K. **"Date of Production"** shall mean the date (i) on which the Producing Party makes the material available for inspection by the Receiving Party; or (ii) produces the material to the Receiving Party.

L. **"Date of Notification"** shall mean the date on which the Receiving Party serves the Producing Party with written notice that it intends to dispute the Producing Party's designation of material.

M. **"Offering Party"** shall mean the party intending to offer an expert as contemplated by Fed. R. Civ. P. Rule 26.

N. **"Metadata"** is data stored electronically that describes characteristics of electronic documents other than their content. For the purposes of this protective order, Metadata is defined as: Author; From; To; CC; BCC; Subject; Email Subject; Date Sent; Time Sent; Date Created; Time Created; Date Received; Time Received; File Name; File Path; File Size; Application; Doc Extension; HASH; Header; Attachment; and Encryption.

II. DESIGNATION OF PROTECTED MATERIAL AND RESOLUTION OF DISPUTES

A. Defendants may designate Protected Material: (1) "Inspection Only"; (2) "Attorneys Eyes Only"; or (3) "Confidential."

B. Plaintiffs may designate Protected Material: (1) “Attorneys Eyes Only”; or (2) “Confidential.”

C. Notes Based on Protected Material

(1) Any notes generated by the Receiving Party during the review of material designated “Inspection Only” or “Attorneys Eyes Only” by the Producing Party shall be deemed “Attorneys Eyes Only.”

(2) Any notes generated by the Receiving Party during the review of material designated “Confidential” by the Producing Party shall be deemed “Confidential.”

D. The Receiving Party may dispute the Producing Party’s designation of material by notifying the Producing Party within 25 business days of the Date of Production. The parties must meet and confer within 5 business days of the Date of Notification and endeavor in good faith to reach an agreement as to the designation of the material. If the parties are unable to reach an agreement regarding the designation of the material, the Receiving Party may make an application to the Court within 10 business days of the Date of Notification. Such application shall only be granted for good cause shown, after the Producing Party has been heard. The disputed material may be submitted to the Court for in camera review.

E. The terms of this Stipulation and Protective Order do not apply to any information that a party obtains from a source other than the designating party. Nothing contained in this section shall constitute a waiver of any privilege by Defendants.

III. ACCESS TO DOCUMENTS DESIGNATED AS PROTECTED MATERIAL

A. Documents designated “Inspection Only” by Defendants and the contents thereof, shall be treated as follows:

(1) Documents designated "Inspection Only" shall be produced for inspection by Plaintiffs' Counsel and Plaintiffs' Designated Support Staff at the Office of the Corporation Counsel, 100 Church Street, New York, New York 10007. Plaintiffs' Counsel and Plaintiffs' Designated Support Staff shall be allowed access to the Inspection Only documents during business hours with two days' prior notice to Defense Counsel, and outside of business hours with two days' prior notice, by arrangement with Defense Counsel.

(2) During the inspection, Plaintiffs' Counsel and Plaintiffs' Designated Support Staff may take handwritten and electronic notes based on the documents on computers provided by Defense Counsel as follows:

a. Defense Counsel shall provide 6 computers on which Plaintiffs' Counsel and Plaintiffs' Designated Support Staff may take electronic notes while viewing the Inspection Only documents. These computers shall have been freshly formatted for these purposes, including an operating system and software that permits note taking. Defense Counsel shall not install any additional software on the computers unless they have discussed any addition with Plaintiffs and obtained their approval. Plaintiffs' Counsel and Plaintiffs Designated Support Staff shall be permitted, if necessary, to enable full-disk encryption on the computers. Defense Counsel shall provide any administrative passwords or privileges necessary for Plaintiffs' Counsel and Plaintiffs' Designated Support Staff to configure secure full-disk encryption on the computers.

b. Defendants, Defense Counsel, and Defendants' Designated Support Staff are prohibited from monitoring, accessing, copying, recording, or capturing any notes or other work product, whether written or oral, generated by Plaintiffs' Counsel and Plaintiffs' Designated Support Staff while they are present at the inspection site. This prohibition

forbids, among other things, the installation or use of monitoring or keylogging software on the computers, the attachment of physical keylogging or monitoring devices to the computers, and the use of any equipment to remotely monitor Plaintiffs' Counsel and Plaintiffs' Designated Support Staff while they are present at the inspection site.

c. Within 30 days after the termination of this matter, including any appeals, Defense Counsel shall delete and destroy the complete contents of the computer hard-drives by performing a multi-pass wipe of each hard-drive, and shall verify the same by affidavit furnished to Plaintiffs' Counsel.

d. Plaintiffs' Counsel and Plaintiffs' Designated Support Staff may remove any electronic notes taken on the computer(s) with a Universal Serial Bus (USB) flash drive, which must be encrypted. Plaintiffs' Counsel and Plaintiffs' Designated Support Staff's notes must be stored locally on an encrypted network and only on workstations and computers used by Plaintiffs' Counsel or Plaintiffs' Designated Support Staff, or in other storage systems or formats that ensure that access is limited to those who are entitled to access "Attorneys Eyes Only" documents. Other than the computer(s) and USB flash drive(s) discussed above, no other electronic devices are permitted in the room where the Inspection Only documents are located.

(3) Documents designated "Inspection Only" shall not be copied, recorded, reproduced, transcribed in their entirety, photographed or otherwise removed by Plaintiffs' Counsel or Plaintiffs' Designated Support Staff from the site of inspection.

(4) Defendants shall make documents designated "Inspection Only" available for use in depositions, court filings, and evidentiary hearings consistent with the provisions of Section IV herein.

B. Documents designated “Attorneys Eyes Only” by Defendants, and the contents thereof, shall be treated as follows:

(1) Documents designated “Attorneys Eyes Only” by Defendants, and the contents thereof, shall only be disclosed to:

- a. Plaintiffs’ Counsel;
- b. Plaintiffs’ Designated Support Staff.

(2) “Attorneys Eyes Only” documents shall only be stored locally on an encrypted network and only on workstations and computers used by Plaintiffs’ Counsel or Plaintiffs’ Designated Support Staff, or in other storage systems or formats that ensure that access is limited to those who are entitled to access “Attorneys Eyes Only” documents.

C. Documents designated “Attorneys Eyes Only” by Plaintiffs, and the contents thereof, shall be treated as follows:

(1) Documents designated “Attorneys Eyes Only” by Plaintiffs, and the contents thereof, shall only be disclosed to:

- a. Defense Counsel;
- b. Defendants’ Designated Support Staff.

(2) “Attorneys Eyes Only” documents shall only be stored locally and only on workstations and computers used by Defense Counsel or Defendants’ Designated Support Staff, or in other storage systems or formats that ensure that access is limited to those who are entitled to access Attorneys Eyes Only documents.

D. Documents designated “Confidential” by Defendants, or the contents thereof, shall only be disclosed to Plaintiffs, Plaintiffs’ Counsel, Plaintiffs’ Designated Support Staff, and

deponents during, or in preparation for, that deponent's deposition as contemplated by Section IV herein.

E. Documents designated "Confidential" by Plaintiffs, or the contents thereof, shall only be disclosed to Defendants, Defense Counsel, Defendants' Designated Support Staff, and deponents during, or in preparation for, that deponent's deposition as contemplated by Section IV herein.

F. Documents designated Protected Material, or the contents thereof, shall not be used for any purpose other than presentation or preparation of a claim or defense in this Action.

G. The Receiving Party shall not disclose or disseminate Protected Material, or the specific contents thereof, except as provided in Sections III and IV.

H. Inadvertent Disclosure

In the event that any party inadvertently fails to designate a document or portion thereof as Protected Material, upon notification the Receiving Party shall return the document, and any copies thereof, immediately to the Producing Party so that the information can be designated Protected Material. The inadvertent failure to designate such information as Protected Material shall not constitute a waiver of any privilege or protections hereunder.

I. Control of Documents

The parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Protected Material.

IV. USE OF DOCUMENTS DESIGNATED AS PROTECTED MATERIAL

A. Depositions

(1) Obtaining "Inspection Only" material in anticipation of a deposition

a. If Plaintiffs' Counsel intend to use a document designated "Inspection Only" as an exhibit at any deposition described in Section IV (A)(2)(a) of this Stipulation and Order, they must notify Defense Counsel and identify the document via its Bates Stamp number at least 5 days in advance of the deposition. Upon receipt of such notice to use the document as a deposition exhibit, Defense Counsel shall provide the "Inspection Only" document at the deposition of the deponent. Upon completion of the deposition, Plaintiffs' Counsel shall return all "Inspection Only" material to Defense Counsel, who will retain the material.

(2) Use of Defendants' Protected Material in Depositions

a. Plaintiffs' Counsel may only use documents designated by Defendants as "Attorneys Eyes Only" or "Inspection Only" or the contents thereof, in depositions as follows:

(i) During the depositions of persons represented by the Office of the Corporation Counsel;

(ii) During the depositions of former NYPD employees, not including confidential informants or other similar agents, if the deponent was employed by the NYPD at the time the documents being used were created or modified; the documents refer to the deponent; or the documents concern a policy in effect at the time of the deponent's employment by the NYPD, and that policy was relevant to the deponent's employment with the NYPD.

(iii) If Plaintiffs' Counsel seek to use Protected Material at a deposition of a current or former NYPD agent, including confidential informants or similar agents, the parties shall meet and confer and if an agreement cannot be reached, Plaintiffs'

Counsel may make an application to the Court and the Court shall make a determination concerning the disclosure of Defendants' Protected Materials to current or former NYPD agents, including confidential informants or similar agents.

(iv) Nothing contained in this section shall constitute a waiver of any privilege by Defendants.

b. If Plaintiffs' Counsel seek to use Protected Material at a deposition other than as provided herein, the parties shall meet and confer, and if an agreement cannot be reached, Plaintiffs may make an application to the Court.

c. Defense Counsel may use documents Defendants have designated as Protected Material, or the contents thereof, at any deposition.

d. Defense Counsel must provide advance notice of their intent to use documents Defendants have designated "Inspection Only" or "Attorneys Eyes only," or the contents thereof, at a deposition of any person represented by Plaintiffs' Counsel. In order for such notification to be effective, Defense Counsel must:

(i) notify Plaintiffs' Counsel in writing of their intent to use such Protected Material at least 5 days in advance of the deposition and identify the Protected Material to be used;

(ii) re-designate the documents "Confidential"; and

(iii) produce copies of any documents to be used that were previously designated "Inspection Only."

(iv) The deponent shall only view the documents that have been re-designated in the presence of Plaintiffs' Counsel or during the deposition. Plaintiffs' Counsel

shall ensure that the deponent does not retain any copies of the documents. Nothing contained in this section shall constitute a waiver of any privilege by Defendants.

(3) Use of Plaintiffs' Protected Material in Depositions

a. Defense Counsel may only use documents designated by Plaintiffs as Protected Material, or the contents thereof, in depositions as follows:

(i) During the deposition of an individual Plaintiff who produced the document, or, if the Plaintiff is an entity, during the deposition of any board member, employee, or congregant of the entity.

b. Plaintiffs' Counsel may use documents designated by Plaintiffs as Protected Material, or the contents thereof, at any deposition.

c. Plaintiffs' Counsel must provide advance notice of their intent to use documents Plaintiffs have designated "Attorneys Eyes Only," or the contents thereof, at a deposition of any person represented by Defense Counsel. In order for such notification to be effective, Plaintiffs' Counsel must:

(i) notify Defense Counsel in writing of their intent to use such Protected Material at least 5 days in advance of the deposition and identify the Protected Material to be used;

(ii) re-designate the documents "Confidential."

(iii) The deponent shall only view the documents that have been re-designated in the presence of Defense Counsel or during the deposition. Defense Counsel shall ensure that the deponent does not retain any copies of the documents. Nothing contained in this section shall constitute a waiver of any privilege by Plaintiffs.

(4) Deposition testimony concerning any Protected Material that reveals the contents of such material shall be presumptively treated as “Attorneys Eyes Only.” Within 30 days of receiving the deposition transcript, the designating party will review the transcript and identify the specific sections that will be designated “Attorneys Eyes Only” or “Confidential,” as set forth above in Section II, and the non-designating party may dispute the designation, as set forth above in Section II. The designating party may also, where good cause is shown, make an application to the Court to have any deposition testimony excluded as privileged. Portions of the transcript that are not so designated within 30 days will be deemed unprotected.

B. Court Filings

(1) The parties may use Protected Material in papers filed with the Court in accordance with the procedures outlined in this Stipulation and Order.

(2) The parties agree that in anticipation of filing any papers with the Court that contain Protected Material they will meet and confer at least 5 business days prior to any such filing. If a resolution concerning the redaction and sealing of Protected Material can be agreed upon, they shall make a joint application to the Court. If a resolution cannot be agreed upon, the party seeking to file under seal will make an application to the Court, including an unredacted copy of the submission to be made, which will be provided in the first instance to the judge. Before the application is decided, if any papers are publicly filed with the Court, all Protected Material at issue shall be redacted, and such redactions must be approved by the Producing Party prior to filing.

(3) To the extent that the Court permits Inspection Only documents to be filed under seal, the following procedures shall govern the production of such documents:

(i) If Plaintiffs' Counsel intend to use a document designated "Inspection Only" as an exhibit to a court filing, they must notify Defense Counsel and identify the document using the designated Bates Stamp number at least 5 days in advance of the filing.

(ii) Upon receipt of such a notice, Defense Counsel shall provide a copy of the Inspection Only material to the Court on a USB drive or through hard-copies that are personally delivered to Chambers.

(iii) Plaintiffs' Counsel shall be given an opportunity to review the Inspection Only material filed by Defense counsel to verify that the correct documents were filed.

C. Evidentiary Hearings

(1) The parties may use Protected Material at any evidentiary hearing before the Court in accordance with the procedures outlined in this Stipulation and Order.

(2) The parties agree that in anticipation of using any Protected Material at an evidentiary hearing they will meet and confer at least 5 business days prior to any such hearing. If a resolution concerning the presentation of Protected Material can be agreed upon, they shall make a joint application to the Court. If a resolution cannot be agreed upon, the party seeking to maintain Protected Material confidential during the hearing will make an application to the Court.

(3) To the extent that the Court permits Inspection Only documents to be used at an evidentiary hearing, the following procedures shall govern the production of such documents:

(i) If Plaintiffs' Counsel intend to use a document designated "Inspection Only" at an evidentiary hearing, they must notify Defense Counsel and identify the document using the designated Bates Stamp number at least 5 days in advance of the filing.

(ii) Upon receipt of such a notice, Defense Counsel shall provide a copy of the Inspection Only material to the Court on a USB drive or through hard-copies that are personally delivered to Chambers.

(iii) Plaintiffs' Counsel shall be given an opportunity to review the Inspection Only material filed by Defense Counsel to verify that the correct documents were filed.

V. RETURN/DESTRUCTION OF PROTECTED MATERIAL

A. Within 30 days after the termination of this case, including any appeals, the counsel for the Receiving Party shall return all hard copies of any Protected Material to the Producing Party. If Protected Materials have been stored electronically by counsel for any Receiving Party, counsel for the Receiving Party shall permanently erase or delete such materials and shall verify the same by affidavit furnished to the Producing Party. To the extent that Protected Material is contained in any attorney notes or materials, the terms of this Protective Order shall continue to apply in perpetuity.

VI. ENFORCEMENT

A. This Stipulation and Protective Order shall be binding upon the parties immediately upon signature of this Stipulation and Protective Order, or Exhibit A, and shall be submitted to the Court for entry as an Order. The Court may compel compliance with this Stipulation and Order as an Order of the Court and may otherwise enforce its terms.

Noncompliance with the terms of this stipulation and Order may be treated as a failure to obey a discovery order pursuant to Fed. R. Civ. P. Rule 37(b) (2)(A).

B. If any Protected Material, or the contents thereof, becomes public, or a party has reason to know that Protected Material has been lost or misplaced, they shall immediately notify the Court through a hard-copy letter filed under seal.

C. Any applications made to the Court, as contemplated herein, shall be made in accordance with the Individual Rules of Judge Joan M. Azrack.

VII. RESERVATION OF RIGHTS

A. Production of Protected Material shall not constitute or be deemed a waiver of any privilege.

B. Nothing in this Stipulation and Order shall prohibit any party from claiming privilege over a portion of a document, or a document in its entirety.

C. Nothing in this Stipulation and Protective order shall be construed to limit the parties' use of their own Protected Material, except as set forth in Section IV(A).

VIII. MODIFICATION FOR EXPERT WITNESSES

At the request of either party, the parties agree to meet and confer in good faith to determine if modification of the Stipulation and Protective Order is appropriate to permit disclosure of Protected Material to an expert witness. Prior to the parties' meeting, the moving party shall disclose: (i) the name of the expert; (ii) the curriculum vitae of the expert; and (iii) a general description of what the expert is intended to be used for. If the parties are unable to reach an agreement, the party seeking modification may make an application to the Court. Such application shall only be granted for good cause shown, after the opposing party has been heard.

Dated: June 30, 2014
New York, New York

MORRISON & FOERSTER LLP

By: [Signature]
Kyle W.K. Mooney
Adam J. Hunt
Kjersten A. Fletcher
Morrison & Foerster LLP
250 West 55th Street
New York, New York 10019
Tel: 212.468.800

Hector G. Gallegos (*pro hac vice*)
Joshua A. Hartman (*pro hac vice*)
David D. Scannell (*pro hac vice*)
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Suite 6000
Washington, D.C. 20006
Tel: 202.887.1500

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

By: [Signature]
Ilina Shamsi
Patrick Toomey
Chandra Bhatnagar
Ashley Gorski
125 Broad Street, 18th Floor
New York, New York 10019
Tel: 212.549.2500

NEW YORK CIVIL LIBERTIES
UNION FOUNDATION

By: [Signature]
Arthur N. Eisenberg
Beth Haroules
Mariko Hirose
125 Broad Street, 19th Floor
New York, New York 10019
Tel: 212.607.3300

CORPORATION COUNSEL OF THE
CITY OF NEW YORK

By: [Signature] *AMD* 7/1/14
Peter Farrell
Alexis Leist
Cheryl Shamas
Odille Farrell
Anthony M. DiSeno
100 Church Street
New York, New York 10007
Tel: 212.356.3532

Attorneys for Defendants

CLEAR PROJECT
MAIN ST. LEGAL SERVICES, INC.
CUNY SCHOOL OF LAW

By: *[Signature]*

Ramzi Kussein
Diala Shimas
2 Court Square
Long Island City, NY 11101
Tel: 718.340.455

Attorneys for Plaintiff

Date: *July 21, 2014*

SO ORDERED:

[Signature]
Hon. Joan M. Azrack
United States Magistrate Judge

EXHIBIT A

The undersigned hereby acknowledges that he or she has read the First Amended Stipulation and Protective Order For the Production and Exchange of Confidential Materials entered in the United States District Court for the Eastern District of New York dated _____ in the action entitled Raza v. City of New York, 13-CV-3448 (PKC) (JMA) and understands the terms thereof, including that he or she is bound by its terms. The undersigned agrees not to use the Protected Material, or the contents thereof, defined therein for any purpose other than the prosecution or defense of this action.

Date

Signature

Print Name

Exhibit B

MEMO ENDORSED



ZACHARY W. CARTER
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

Peter G. Farrell
Senior Counsel
Tel: (212) 356-3532
Fax: (212) 356-3509

March 14, 2014

Jethro M. Eisenstein, Esq.
Profeta & Eisenstein
45 Broadway, Suite 2200
New York, NY 10006

Re: Handschu v. Special Services, 71 Civ. 2203 (CSH)

Dear Jethro:

I write in response to your March 14, 2014 letter. It accurately captures our understanding subject to the following caveat. Defendants are not agreeing as to what will or will not be deemed "judicial documents" and reserve all objections and arguments regarding what, if anything, should be filed at any subsequent time with the Clerk of the Court under seal or for public review. We also continue to disagree that any other investigate statements including those associated with the *Raza* litigation are "plainly relevant" to the current dispute.

As we discussed and agreed, I will request the Court to so order the following provisions regarding the disclosure of the investigative statements.

- Disclosure of the investigative statements to occur at the offices of the Corporation Counsel.
- Disclosure of the investigative statements is limited to the 5 individual Class Counsel.
- No removal or photocopying of the investigative statements.
- No reproduction of the investigative statements by hand.
- The information in the investigative statements and any notes generated shall be deemed "Attorneys Eyes Only" and shall not be disclosed or discussed with anyone else except the Court.
- Defendants may redact information in the investigative statements to protect law enforcement interests including information related to on going investigations, the identity of undercover and confidential informants, methods, and the privacy of individuals.


- Defendants' agreement to make the investigative statements available for inspection shall not constitute or be deemed a waiver of any privilege or prohibit defendants' ability to claim privilege over a portion of a document or a document in its entirety.

Sincerely,


Peter G. Farrell
Senior Counsel

March 17, 2014 :

In the Court's opinion this letter, read together with the letters referenced therein — Corporation Counsel letter dated October 8, 2013 and Class Counsel letter dated March 14, 2014 — set forth a sensible, practical and pragmatic method for advancing the litigation. Accordingly, the agreements between counsel evidenced by these letters are SO ORDERED by the Court.


US DJ